TOURO COLLEGE
JACOB D. FUCHSBERG LAW CENTER
*Where Knowledge and Values Meet*

Touro Law Review

Volume 37 | Number 2 Article 17

2021

# Wearing My Crown to Work: The Crown Act as a Solution to Shortcomings of Title VII for Hair Discrimination in the Workplace

Margaret Goodman
*Touro Law Center*

# WEARING MY CROWN TO WORK: THE CROWN ACT AS A SOLUTION TO SHORTCOMINGS OF TITLE VII FOR HAIR DISCRIMINATION IN THE WORKPLACE

*Margaret Goodman**

## I. INTRODUCTION

Hair can be a significant part of a person's cultural identity.[1] It can be used as an expression of identity as "[h]airstyles and rituals surrounding hair care and adornment convey powerful messages about a person's beliefs, lifestyles, and commitments."[2] Unfortunately, the cultural significance of a person's hair is not viewed as important under the law.

Imagine applying for a job. You spend countless hours searching for employment. You send your resume and cover letter to hundreds of employers. Finally, you get an interview. You practice for your interview and polish the fine details of your resume. You choose the perfect professional attire and grab your briefcase. You meet the interviewer and ace the interview. However, you are then told you must change your hairstyle before your actual employment begins. When you ask for clarification, they cite that your hairstyle is "messy," "unkempt," and "unprofessional." This is the case for many people of color, including Beverly Jenkins, Renee Rodgers, Charles Eatman, Carmelita Vazquez, and Chastity Jones. All of their stories will be shared in this Note.[3]

---

* J.D. Candidate, Touro College Jacob D. Fuchsberg Law Center, 2022; B.S. in Public Affairs, Indiana University Bloomington, 2019. I would like to thank the Law Review staff and Professor Meredith Miller for their continued support and guidance during this process. I would also like to thank my family for their constant encouragement and love.

[1] *See* Deborah Pergament, Symposium, *It's Not Just Hair: Historical and Cultural Considerations for an Emerging Technology*, 75 CHI.-KENT L. REV. 41, 41 (1999).

[2] *Id.* at 44-45.

[3] *See infra* Section II(A).



 

Hair discrimination has existed for centuries and has been perpetuated by workplace grooming policies.[4] These policies can be facially neutral,[5] by requiring "professional" or "businesslike" appearances but still have discriminatory effects by applying disproportionately to minority employees. Federal employment discrimination claims are governed under Title VII of the Civil Rights Act of 1964, which is a statutory provision to protect employees against workplace discrimination based on their race, color, religion, sex, or national origin.[6]

Workplace grooming policies can be disproportionately discriminatory against people of color based on the nature and texture of their hair, which has distinct qualities compared to those of their white counterparts.[7] Across the United States, there has been a push for the Creating a Respectful and Open World for Natural Hair Act ("CROWN Act"),[8] to protect people of color in the workplace against discrimination that would require them to conform to the social norms or expectations of "professional" hairstyles. The CROWN Act was proposed by Rep. Cedric Richmond of Louisiana on December 5, 2019.[9]

Thus far, California, New York, New Jersey, Colorado, Maryland, Virginia, and Washington have adopted this law or a similar version of it.[10] New Jersey's version of the CROWN Act is modeled after California's statute,[11] and states that "'[r]ace' is inclusive of traits historically associated with race, including, but not limited to, hair texture, hair types, and protective hairstyles."[12] It further includes

---

[4] *Id.* at Section II.

[5] Facially neutral in this context is an employment practice or policy that is not outwardly discriminatory but is discriminatory in its effects.

[6] *See* 42 U.S.C. § 2000e-2.

[7] *Ethnicity and Hair Structure*, ACTIVILONG PARIS, https://activilong.com/en/content/96-ethnicity-and-hair-structure (last visited Mar. 23, 2021).

[8] *See The CROWN Act: Working to Eradicate Race-Based Hair Discrimination*, DOVE, https://www.dove.com/us/en/stories/campaigns/the-crown-act.html (last visited Feb. 22, 2021).

[9] H.R. Res. 5309, 116th Cong. (2020).

[10] *See* S.B. S6209A, Legis. 2019-2020 Sess. (N.Y. 2019); *see* N.J. STAT. § 10:5-5ww (West 2020); *see* H.B. 20-1048, Gen. Sess. (Colo. 2020); *see* S.B. 531, Reg. Sess. (Md. 2020); *see* S.B. 50, Reg. Sess. (Va. 2020); *see* H.B. 2602, Legis. Serv., 66th Legis. (Wash. 2020).

[11] S.B. 188, Reg. Sess. (Ca. 2019).

[12] N.J. STAT. § 10:5-5ww (West 2020).

braids, locs, and twists as examples of protective hairstyles.[13] New York's governor signed an executive order that is identical to the New Jersey statute.[14]

These hairstyles reflect more than a choice; they represent a long and storied cultural significance.[15] Due to this significance, employees should be able to represent themselves freely in terms of hairstyle in the workplace.

This Note will discuss the existing protections for hair discrimination in Title VII, and how employees would be afforded greater protections under the CROWN Act. The CROWN Act symbolizes a movement toward inclusion in the workplace and provides educational opportunities to protect employees from being forced to change their hairstyle to meet an employer's standards.

This Note will be divided into five sections. Section II will explore the historical background of the cultural associations of hair. Section III will discuss the current protections available under Title VII, and various examples of cases where courts examined this issue. Section IV explores how the CROWN Act could be a solution to any possible gaps in Title VII to expand protections for employees and further discusses opposition to the CROWN Act and recommendations to employers. Section V will conclude this Note by arguing that the CROWN Act is the best solution to fill the gaps of Title VII due to courts' hesitancy to expand their interpretation of race.

## II. HISTORICAL BACKGROUND

### A. Pre-1700s Era Outside of the United States

The hair of people of color ("POC") has texture and traditional protective styles, which are distinct from hair of people of European or Asian descent.[16] Hair is an important part of cultural experiences for

---

[13] *Id.*

[14] S.B. S6209A, Legis. 2019-2020 Sess. (N.Y. 2019).

[15] *See infra* Section II.

[16] Ethnicity and Hair Structure, *supra* note 7. Protective hairstyles are defined as any style that keep the natural hair texture healthy by limiting its exposure to any damage or manipulation. Protective hairstyles include, but are not limited to, braids, cornrows, and Bantu knots. *Id.*; Natalya Moosa, *Protective Styling: What Every Natural Needs to Know*, AFROCENCHIX (Oct. 25, 2018), https://afrocenchix.com/blogs/afrohair/protective-styling-what-every-natural-needs-to-know.

POCs and has a rich history dating as far back as 3000 B.C., when cornrows were depicted on Stone Age tablets in the Sahara region.[17] In West African communities, braided hair was "used to signify marital status, age, religion, wealth, . . . rank," and geographic origin.[18] Hairstyles were intricate and carefully crafted to share a story, whether that is a tale of a jealous wife or of a man going off to battle.[19]

Benkos Bioho was an African king who was kidnapped for slavery and forcibly brought to Colombia by the Portuguese in the seventeenth century.[20] After he escaped his enslavement, he created a protected city for newly-escaped people.[21] Bioho used hair braiding and styling to create maps to help slaves find his protected city and send messages to those that remained enslaved, enabling people to communicate with few resources.[22] Further, he directed others to incorporate seeds into their cornrows, which, to the unknowing, served as decoration, but really served as a way for them to have crops to plant once out of slavery.[23]

### B. Slavery and Pre-Civil Rights Era

Upon Africans' arrival to the Americas, their heads were immediately shaved by white and European members of society.[24] Removing their hair devalued them as human beings.[25] It was considered the first act in breaking their African spirit and identity when slaves were forced to transition to their new reality of brutal and aggressive treatment under slavery in the Americas.[26] While enslaved, black women did not have access to hair products and began wearing

---

[17] Chirali Sharma, *Africans Used Their Hairstyles to Hide Escape Maps from Slavery in Their Hairstyles*, ED TIMES (Jan. 29, 2018), https://edtimes.in/africans-used-to-hide-escape-maps-from-slavery-in-their-hairstyles.
[18] Madison Horne, *A Visual History of Iconic Black Hairstyles*, HISTORY (Feb. 1, 2019), https://www.history.com/news/black-hairstyles-visual-history-in-photos.
[19] *Id.*
[20] Sharma, *supra* note 17.
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] Nina Ellis-Hervey et al., *African American Personal Presentation: Psychology of Hair and Self-Perception*, 47 J. BLACK STUD. 869, 869 (2016).
[25] *Id.*
[26] Brenda A. Randle, *I Am Not My Hair; African American Women and Their Struggles with Embracing Natural Hair!*, 22(1-2) RACE, GENDER & CLASS 2014 CONF. 114, 117 (2015).

du-rags or headscarves while performing hours of harsh work.[27] Du-rags and headscarves were other ways slaves hid their "undone" hair from white people so that they did not "offend" them with their appearance and could appear in a more "acceptable" manner.[28] Slaves who were forced to work in the fields also began wearing cornrows because it was a style that required less time and fewer tools to create.[29] Those that worked indoors commonly donned braids.[30]

However, given the lack of hair styling products, they were reduced to using bacon fat and grease as styling products.[31] Slaves were also only able to style their hair once per week, so the style they chose had to be one that could last while they endured extremely oppressive and harsh working conditions.[32] Slaves that had more kinky and textured hair often endured harsher treatment as slave owners began categorizing people based on their skin tone and hair texture.[33] These categorizations attempted to push slaves to abandon their traditional hairstyles.[34] Slaves with more Eurocentric type hair received better treatment, though still harsh, compared to those with more textured hair.[35]

### C. Post-Civil Rights Movement

Even after emancipation, preconceived notions about black hair still existed. These notions gave rise to black men and women using chemical processes and wigs to obtain more Eurocentric hair.[36] Advancing the white narrative of beauty acted as an attempt to remove the cultural identity associated with hair.[37] Black women, who chose to style their hair similar to white women, were considered to be "well-adjusted" when compared to those who chose to keep their hair in more traditional, cultural styles.[38]

---

[27] *Id.*
[28] Ellis-Hervey et al., *supra* note 24, at 871.
[29] *Id*.
[30] *Id*.
[31] Randle, *supra* note 26, at 117.
[32] Ellis-Hervey et al., *supra* note 24, at 871.
[33] *Id*.
[34] *Id*.
[35] *Id*.
[36] *Id*.
[37] *Id*.
[38] *Id*.

In the 1960s and 1970s, the term "natural hair" was coined when afros developed into a popular symbol of black power and political change.[39] This was spurred by the "Black is Beautiful" Movement,[40] in which black Americans began to shift away from wearing Eurocentric hairstyles in favor of having natural hairstyles such as afros or braids.[41] The movement focused on embracing black culture and identity.[42] It also welcomed different hairstyles, skin tones, and other physical characteristics found across the black community.[43] Grooming items, such as hair picks, became exceedingly popular and were sometimes branded with symbols in support of the movement.[44] During this time, Angela Davis, a black activist, donned an afro to show her opposition to white and Eurocentric beauty standards and her support of the "Black is Beautiful" Movement.[45] Additionally, another activist, Marcus Garvey, encouraged black women to abandon Eurocentric hairstyles to embrace their cultural identity.[46]

### D. Current Movement

In 2019, Dove, a beauty and personal care brand, partnered with the National Urban League, Color for Change, and the Western Center on Law and Poverty in support of the CROWN Act and the natural hair movement to protect Black Americans subjected to hair discrimination.[47] Dove joined this partnership to make a "more equitable and inclusive beauty experience for Black women and girls."[48]

---

[39] *Id*. at 874.
[40] *Black is Beautiful: The Emergence of Black Culture and Identity in the 60s and 70s*, NAT'L MUSEUM OF AFRICAN AM. HIST. & CULTURE, https://nmaahc.si.edu/blog-post/black-beautiful-emergence-black-culture-and-identity-60s-and-70s (last visited Feb. 2, 2021).
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] Chanté Griffin, *How Natural Black Hair at Work Became a Civil Rights Issue*, JSTOR DAILY (July 3, 2019), https://daily.jstor.org/how-natural-black-hair-at-work-became-a-civil-rights-issue.
[46] *Id.*
[47] *The CROWN Act: Working to Eradicate Race-Based Hair Discrimination*, *supra* note 8.
[48] *Id.*

Dove also conducted a study of 2,000 women to determine the prevalence of hair discrimination in the workplace.[49] The study included Black and non-Black women between twenty-five and sixty-four years old who worked in an office setting, full-time, or in a corporate setting within six months of the study.[50] The study found that black women are thirty percent more likely to receive direct information about their employer's appearance or grooming policies.[51] Moreover, it found that black women are one and a half times more likely to be sent home or know of another black woman who was sent home, from work because of her hair.[52]

In a recent study out of Duke University, 480 participants were asked to act as job recruiters and rate black and white women based on their appearance to determine their level of professionalism and competency.[53] Black women with natural hairstyles scored notably lower than black women with straightened hair and white women with straight or curly hair.[54] Another aspect of that study asked participants to evaluate a black, female job candidate with a variety of hairstyles.[55] When her hairstyle was straight, participants described her as "more 'polished, refined, and respectable.'"[56] In comparison, white women received the same grade no matter how their hair was styled.[57]

In 2014, the United States Department of Defense, the largest employer in the nation, enacted a ban on natural hairstyles such as afros, twists, cornrows, and braids.[58] As recently as 2018, the United States Armed Forces did not allow black women to wear protective hairstyles, claiming that they were "unkempt" and "matted."[59] The

---

[49] JOY Collective, *C.R.O.W.N. Research Study*, DOVE, (2019) https://static1.squarespace.com/static/5edc69fd622c36173f56651f/t/5edeaa2fe5ddef345e087361/1591650865168/Dove_research_brochure2020_FINAL3.pdf.
[50] *Id.* at 6.
[51] *Id.* at 4.
[52] *Id.*
[53] Kelsey Butler, "Bias Against Black Women's Hair May Hurt Their Job Hunt, Study Finds" Bloomberg Law (Aug. 12, 2020, 9:00 AM), https://www.bloomberg.com/news/articles/2020-08-12/black-women-s-natural-hair-may-hinder-job-prospects-study-finds.
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] Maya Rodan, *U.S. Military Rolls Back Restrictions on Black Hairstyles*, TIME (Aug. 13, 2014), http://time.com/3107647/military-black-hairstyles.
[59] *Id.*

Armed Forces policy has since been rescinded due to public outrage,[60] and the Armed Forces has recognized that calling hairstyles unkempt perpetuated discriminatory beliefs because hairstyle did not impede servicewomen's ability to perform their job.[61]

The New York City Commission on Human Rights released a statement providing guidance on racial discrimination based on hairstyle.[62] This guidance takes the position that employment grooming policies are rooted in white principles of professionalism and exacerbate discriminatory beliefs that people of color are not suited for professional workplaces.[63] The Commission's basis for issuing this guidance is that protective hairstyles are inherently part of the black identity and employers should know of this relationship.[64] Under this set of policies, employers are not to enact any workplace grooming policy that explicitly excludes black hairstyles.[65] Employers cannot refer to these hairstyles in any fashion that gives the impression that black hairstyles are unprofessional.[66] Moreover, New York City employers are forbidden from forcing black employees to manipulate their hair to fit a white or Eurocentric standard of beauty.[67] Importantly, it also forbids employers to harass or impose unfair conditions on employees with protective hairstyles.[68] For example, it is discriminatory for an employer to refuse to allow employees with cornrows to interact with customers unless they change their hairstyle.[69]

---

[60] *Id.*

[61] Creating a Respectful and Open World for Natural Hair Act, H.R. Res. 5309, 116th Cong. § 6 (2020); Rodan, *supra* note 58. "Each Service reviewed its hairstyle policies to ensure standards are fair and respectful while also meeting out military requirements . . . [a]s a result of these reviews the Army, Navy, and Air Force determined changes were necessary to their Service grooming regulations to include additional authorized hairstyles." *Id*.

[62] This applies to employers with more than four employees. *NYC Commission on Human Rights Legal Enforcement Guidance on Race Discrimination on the Basis of Hair*, NYC COMM'N HUMAN RTS., 1, (Feb. 2019), https://www1.nyc.gov/assets/cchr/downloads/pdf/Hair-Guidance.pdf.

[63] *Id.* at 6.

[64] *Id.*

[65] *Id.* at 7.

[66] *Id.*

[67] *Id.* at 1.

[68] *Id.* at 8; *see supra* note 16 for the definition of protective hairstyles.

[69] *Id.* at 8.

## III. CURRENT PROTECTIONS AVAILABLE TO EMPLOYEES UNDER TITLE VII

Currently, Title VII of the Civil Rights Act of 1964 provides that employers cannot:

> (1) fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
> (2) limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.[70]

This leaves the door open for interpretation as to where hairstyle fits, or if it even fits at all. Courts should determine whether hairstyle is considered part of race or ethnicity under Title VII. Given that hair texture and style is a racial characteristic, Title VII should apply.

To assert a successful claim under Title VII, an employee bears the initial burden of showing that the employee is a member of a protected class, was qualified for the job, and was not hired or terminated despite their qualifications.[71] If the employee meets this initial burden, the burden shifts to the employer to show that there was a legitimate and nondiscriminatory reason for the rejection or termination.[72] If the employer can show that the adverse act was done for a legitimate and nondiscriminatory purpose, the burden shifts back to the employee to show that the reason provided by the employer was a pretext for discrimination.[73]

---

[70] 42 U.S.C.A. § 2000e-2.
[71] McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973).
[72] *Id.*
[73] *Id.*

### A. Relevant Cases Involving Hair Discrimination

Courts have interpreted discrimination in the workplace based on hairstyle or hair type differently. For example, Beverly Jenkins was a black woman who worked for Blue Cross-Blue Shield, Inc. for at least three years before she was terminated for, what she believed, was her hairstyle.[74] In her complaint, Ms. Jenkins claimed that her supervisor refused to promote her, a black woman with an afro, because the supervisor felt she could not represent the company.[75] Ms. Jenkins wore an afro for three years prior to this incident.[76] The Seventh Circuit Court of Appeals found that the employer's actions were sufficient to show racial discrimination.[77] It held that a class could be formed and "composed of all black and female persons who are employed, or might be employed, by Blue Cross-Blue Shield, Inc."[78] Further, this court held that specifically referencing Ms. Jenkins' afro was merely a method by which her employer allegedly discriminated against her based on her race.[79]

Similarly, Renee Rogers was a black employee of American Airlines, who wore her hair in cornrows during her work as an airport operations agent.[80] American Airlines had a grooming policy that prohibited all employees from wearing an all-braided hairstyle.[81] Ms. Rogers claimed that braided hair has cultural significance to black women.[82] She argued that her hairstyle "has been, historically, a fashion and style adopted by Black American women, reflective of [the] cultural, historical essence of the Black women in American society."[83] The Southern District of New York found that American Airlines' policy applied to all employees, not just black employees.[84] The court reasoned that hairstyle is a mutable choice, "even if socioculturally associated with a particular race or nationality, [it] is not an impermissible basis for distinction in the application of

[74] Jenkins v. Blue Cross Mut. Hosp. Ins., 538 F.2d 164 (7th Cir. 1976).
[75] *Id.* at 167.
[76] *Id.*
[77] *Id.* at 169.
[78] *Id.*
[79] *Id.* at 168. The employer petitioned for certiorari, but the petition was denied. *Id.*
[80] Rogers v. Am. Airlines, 527 F. Supp. 229 (S.D.N.Y. 1981).
[81] *Id.*
[82] *Id.*
[83] *Id.* at 232.
[84] *Id.*

employment practices by an employer."[85] The court dismissed Ms. Rogers' argument that the cultural implications of her hairstyle should be protected because it distinguished between natural hair and hairstyle choices.[86] It is important to note that she was not required to change her hairstyle and could keep it in cornrows outside of work; however, American Airlines suggested she put it in a bun or hair wrap while she worked.[87] Because an available alternative existed, the court did not find that the policy "offend[s] a substantial interest."[88]

Charles Eatman had similar circumstances in his workplace. In *Eatman v. United Parcel Service*,[89] Charles Eatman worked as a driver for the United Parcel Service ("UPS").[90] Mr. Eatman, a black man, began wearing dreadlocks in 1995 to celebrate his identity and connect to his culture.[91] UPS had a company policy that required that male drivers' "[h]air styles should be worn in a businesslike manner."[92] If the UPS labor relations manager determined a male driver had an "unconventional" hairstyle, that employee was required to wear a hat while driving.[93] UPS offered different hats, including a baseball cap and a wool winter hat.[94] Unlike his coworkers, Mr. Eatman was only permitted to wear the wool hat, because his dreadlocks were shown too conspicuously in the other options.[95]

After Mr. Eatman wore the wool hat for an extended period of time, he reported that he felt faint wearing it during the summer and that the hat caused deterioration of some of his dreadlocks.[96] A dreadlock expert involved in the case noted that

> "wearing a thick wool ski hat smothers locked hair, causing the hair to become over-heated and moist." This causes two problems. First, "the locks become more susceptible to fragmentation, weakness, splitting, matting, and breakage;" second, "the prolonged

[85] *Id.*
[86] *Id.*
[87] *Id.* at 233.
[88] *Id.*
[89] 194 F. Supp. 2d 256, 259 (S.D.N.Y. 2002).
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *Id.*
[94] *Id.* at 260.
[95] *Id.*
[96] *Id.*

> exposure of a thick wool ski hat on locked hair causes dandruff, louse, bacteria, mold and other fungi to breed and thrive within the locks and on the scalp."[97]

Beyond the physical problems caused by being forced to wear the wool, winter hat, Mr. Eatman was harassed by other UPS employees for his dreadlocks.[98] These employees joked that he used illegal drugs and looked like an alien.[99]

The Southern District of New York refused to expand Title VII in this case because it found that "even if [the company's] policy explicitly discriminated against locked hair, it would not violate Title VII on its face."[100] It denied recognizing the association between hair and race, because it viewed hair as an easily changeable characteristic.[101]

In November 2020, UPS changed its grooming policies to allow for natural hairstyles as long as "you dress appropriately for the workday."[102] Under this new policy and standard, Mr. Eatman would now likely prevail in court, given UPS's new acceptance of natural hairstyles in the workplace. Mr. Eatman's claim represented more than just his hairstyle; it also showed the physical effects of forcing an employee to comply with this kind of grooming policy.

In contrast to *Rogers* and *Eatman*, some courts have found that hair-based discrimination exists. In *Vazquez v. Caesar's Paradise Stream Resort*,[103] Carmelita Vazquez was hired as a maid at Caesar's Paradise Stream Resort ("Resort").[104] The Resort had an appearance policy, which mandated that employees present "a professional image at all times," which required that employees wear their hair "conservative[ly] in style."[105] While specific hairstyles were not explicitly mentioned in the employee handbook, the Resort approved or rejected braided hairstyles on a case-by-case basis.[106] Employees

---

[97] *Id.* (citation omitted) (citing Evans Aff. ¶ 3).
[98] *Id.* at 261.
[99] *Id.*
[100] *Id.* at 262.
[101] *Id.* at 262, 264.
[102] Paul Ziobro, *UPS Lifts Ban on Beards in Diversity Push*, WASH. POST (Nov. 10, 2020, 5:32 PM), https://www.wsj.com/articles/ups-lifts-ban-on-beards-in-diversity-push-11605045820.
[103] No. 3:CV-09-0625, 2013 WL 6244568, at *1 (M.D. Pa. Dec. 3, 2013).
[104] *Id.*
[105] *Id.*
[106] *Id.*

interpreted the policy differently, but most believed that braids that were not tight to the scalp were permissible.[107] On numerous occasions,[108] including in 2004, 2006, and 2007, the Resort found that Ms. Vazquez's braids were unacceptable based upon its vague and subjective standard.[109] Her supervisor required her to remove her braids in accordance with the Appearance Policy.[110] After she refused, the supervisor terminated Ms. Vazquez.[111] Her termination notice specifically referenced that she was fired as a result of her refusal to remove her braids.[112]

Ultimately, the jury found for Ms. Vazquez, finding that her termination was the result of the Resort's discriminatory intent.[113] It is notable that the jury did not find for her based on a violation of the Resort's appearance policy, as the violation given was only the means used to act on the Resort's discriminatory intent.[114] Ms. Vazquez established a prima facie case for discrimination under Title VII. First, as a black and Hispanic woman, she was part of a protected class.[115] Second, she proved that she was qualified for her housekeeping job.[116] Finally, she showed that she suffered adverse employment action by the Resort.[117] The Resort argued that terminating Ms. Vazquez served a legitimate, nondiscriminatory purpose because she refused to comply with company policy.[118] However, the jury found that there was a pretextual discriminatory purpose for firing Ms. Vazquez.[119] Her termination notice cited she was terminated because she wore braids, which was not a violation of the Resort's appearance policy, that the jury found to be discriminatory.[120]

---

[107] *Id.* at *2.
[108] *Id.*
[109] *Id.*
[110] *Id.*
[111] *Id.*
[112] *Id.* Two other minority employees were terminated because of their braided hair violating the appearance policy, while non-minority employees did not face any adverse action after wearing braids. *Id.* at *3.
[113] *Vazquez*, 2013 WL 6244568, at *11.
[114] *Id.* at *11.
[115] *Id.* at *5.
[116] *Id.*
[117] *Id.*
[118] *Id.* at *6.
[119] *Id.*
[120] *Id.*

This case serves as an example of how an appearance policy, which may seem to be "race neutral," does not exclude the possibility that discrimination could occur. In other words, a court will examine discriminatory impact, even if the discriminatory intent is not clear. The policy itself was ineffective given that it examined braids on an individual basis. The discretionary power provided to supervisors or other people whose job it is to determine appropriate appearance left the door open for discriminatory behavior. Due to the wide discretion of the policy enforcer, white employees were allowed to keep their braids, but Ms. Vazquez was fired for hers.[121]

The need to protect current and prospective employees alike must be considered when discussing protections in the workplace. In *Equal Employment Opportunity Commission v. Catastrophe Management Solutions*,[122] Chastity Jones, a black woman, obtained a job in a customer service position at Catastrophe Management Solutions ("CMS").[123] After being offered the position, the human resource manager, Jeannie Wilson, ushered Ms. Jones into a private room to discuss the next steps before beginning her employment.[124] There, Ms. Wilson made a comment about Ms. Jones' dreadlocks and informed her that the company would not hire her if she kept her hair in that style.[125] Wilson said she believed that dreadlocks were messy and that company policy dictated that hair must be maintained in a professional and businesslike manner.[126] Ms. Wilson also stated that other black applicants were told to remove their dreadlocks to obtain employment at CMS.[127] When Ms. Jones refused to cut her dreadlocks, Ms. Wilson informed her that CMS would not hire her, and Ms. Wilson required Ms. Jones to return all paperwork.[128]

The EEOC argued that dreadlocks, as a hairstyle, are directly related to an immutable trait because they expand on natural hair

---

[121] *Id.* at *10.
[122] 852 F.3d 1018, 1021 (11th Cir. 2016).
[123] *Id.*
[124] *Id.*
[125] *Id.* at 1022.
[126] *Id.* "All personnel are expected to be dressed and groomed in a manner that projects a professional and businesslike image while adhering to company and industry standards and/or guidelines. . . . [H]airstyle should reflect a business/professional image. No excessive hairstyles or unusual colors are acceptable[.]" *Id.* (alteration in original).
[127] *Id.*
[128] *Id.*

texture as a characteristic, which is historically associated with a particular group and cannot be changed.[129] The EEOC's position is that

> race "is a social construct and has no biological definition." Second, the EEOC asserted that "the concept of race is not limited to or defined by immutable physical characteristics." Third, according to the EEOC Compliance Manual, the "concept of race encompasses cultural characteristics related to race or ethnicity," including "grooming practices." Fourth, although some non-black persons "have a hair texture that would allow the hair to lock, dreadlocks are nonetheless a racial characteristic, just as skin color is a racial characteristic."[130]

It further explained the cultural implications of how engrained dreadlocks and other similar styles are in black culture.[131]

However, the Eleventh Circuit held that Title VII cannot be expanded to include cultural practices.[132] The court explained that, while the texture of hair is immutable and cannot be changed, the style is mutable and can be changed.[133] Thus, it is not available for protection under Title VII.[134]

While the Eleventh Circuit discussed the terms "mutable" and "immutable," these terms are not traditionally associated with Title VII.[135] However, the Eleventh Circuit incorporated these terms into its analysis, finding that, "Title VII protects persons in covered categories with respect to their immutable characteristics, but not their cultural practices."[136] The court reasoned that "'the concept of immutability,' though not perfect, 'provides a rationale for the protected categories encompassed within the antidiscrimination statutes.'"[137] The court's analysis explains the use of the mutable or

---

[129] *Id.* at 1024.
[130] *Id.* at 1022.
[131] *Id.* at 1024.
[132] *Id.* at 1030.
[133] *Id.*
[134] *Id.*
[135] *See* 42 U.S.C. § 2000e-2 (finding that the words mutable and immutable are not used in Title VII).
[136] *Catastrophe Mgmt. Sols.*, 852 F.3d at 1030.
[137] *Id.*

immutable trait standard in Title VII discrimination cases, because those terms are generally not used when considering Title VII claims.

### B. Intersectionality Between Race and Hairstyle

These cases, along with the major historical and cultural significances of hair, demonstrate that there is an intersectionality between hairstyle and race, especially for black men and women. While the *Rogers* court recognized some cultural significance associated with traditionally black hairstyles, the facts of that case did not permit the court to further examine the intersectionality of race and hairstyle.[138] Since the employer had given the employee reasonable alternatives that allowed her to preserve her hairstyle, the court withheld from ruling on any intersectionality.[139] Though courts have been hesitant to draw a connection, and recognize the intersectionality, between race and hairstyle, there have been ample opportunities to do so.[140] An example of such an opportunity is the EEOC case brought on behalf of Chastity Jones, where the EEOC introduced information to the court explaining the intersectionality.[141]

### C. Is Title VII Enough?

The debate between mutable and immutable characteristics is more applicable to the Equal Protection Clause than Title VII, as those characteristics are considered in equal protection claims for classification purposes.[142] Considering this distinction, courts and society must contemplate if Title VII is sufficient in protecting employees against hair discrimination when it is so closely related to a specific racial group's history and culture. Title VII could easily encompass hairstyle under the existing race category because of the significant intersection between race and hair. However, no court mentioned in this Note has definitively held that hairstyle fits directly under Title VII in a way that would establish a clear precedent where

---

[138] *See* Rogers v. Am. Airlines, 527 F. Supp. 229 (S.D.N.Y. 1981).
[139] *See id.*
[140] *See Catastrophe Mgmt. Sol.*, 852 F.3d at 1026; Eatman v. United Parcel Serv., 194 F. Supp. 2d 256 (S.D.N.Y. 2002).
[141] *See Catastrophe Mgmt. Sol.*, 852 F.3d at 1026.
[142] *See* U.S. CONST. amend. XIV, § 1; *see generally* 42 U.S.C. § 2000e-2 (finding that the words mutable and immutable are not used in Title VII, making that an inapplicable standard when using this statute).

Title VII could protect employees against this type of discrimination.[143]

Courts' unwillingness to apply Title VII to hair discrimination originates from the fact finders' lack of understanding of the cultural importance associated with hairstyles. Some courts have considered this issue under the view of hairstyle being a mutable or immutable characteristic;[144] however, the mutability of characteristics is not advanced as a factor through Title VII.[145] Although the mutable versus immutable debate has merit, a hairstyle's historical and cultural significance outweighs whether people can, or should, change their appearance. In viewing hairstyle as mutable, this argument ignores the great significance that hair holds in different cultures, races, and nationalities. The cultural implications associated with hairstyles cannot be changed, which gives more weight to considering hairstyle an immutable trait, even if styles can be changed. Title VII has not been broadly interpreted to incorporate hairstyle into explicitly protected categories including race and national origin, which highlights the CROWN Act as a necessary solution to protect employees who wear their hair in protective hairstyles.

## IV. CROWN ACT AS A POTENTIAL SOLUTION

If courts find that hairstyle is outside the scope of Title VII, additional legislation specifically referencing "hair discrimination" is necessary. The CROWN Act intends to prohibit the denial of employment and educational opportunities based on hair texture and protective hairstyles worn by people of color.[146] These protected hairstyles include, but are not limited to, braids, twists, and knots.[147] The federal version of the CROWN Act goes even further to include protection against hair discrimination in federal assistance programs, housing programs, and public accommodations;[148] meanwhile, state versions of the CROWN Act have mostly applied to education and

[143] *See supra* Section III(A).
[144] *E.g.*, *Rogers*, 527 F. Supp at 229; *Eatman*, 194 F. Supp. 2d at 256.
[145] *See supra* p. 16; *see also supra* text accompanying notes 134-35.
[146] H.R. Res. 5309, 116th Cong. (2020).
[147] *Id.* at ¶ 4.
[148] *Cf.* S.B. S6209A, Legis. 2019-2020 Sess. (N.Y. 2019).

employment.[149] The CROWN Act can serve as a solution to this unique type of discrimination where Title VII leaves some ambiguity.

In addition to its protective qualities, the CROWN Act serves to educate the public on the historical prevalence of hair discrimination and the cultural significance of hair.[150] It also serves to remedy any shortcomings of Title VII by protecting minority employees who are subject to discriminatory workplace grooming policies.[151] Considering the Eleventh Circuit's recent ruling in *EEOC v. CMS*,[152] other courts may find that Title VII cannot be expanded to protect employees from adverse employment action based on their hairstyle.[153] While courts should recognize that the historical and cultural context of hair is so closely related to race, the CROWN Act acknowledges the area which Title VII overlooks.

The text of the CROWN Act begins by recognizing the logical nexus between hair, race, and national origin, which may ultimately lead to discrimination.[154] It explicitly mentions that black Americans are deprived of educational and employment opportunities when they choose to don styles that involve "tightly coiled or tightly curled [hair], or worn in locs, cornrows, twists, braids, Bantu knots, or [a]fros."[155] Courts no longer need to analyze the connection between race and hair under Title VII because the CROWN Act acknowledges the historical significance of hair.[156] Thus, a court is provided the information required to determine whether discrimination based on hairstyle existed.

In New York, an executive order added that "the term 'race' shall, for the purposes of this article include traits historically associated with race, including but not limited to, hair texture and protective hairstyles."[157] The New Jersey legislature also included that "'[r]ace' is inclusive of traits historically associated with race, including, but not limited to, hair texture, hair types, and protective

---

[149] H.R. Res. 5309, 116th Cong. (2020).
[150] *Id.*
[151] *Id.* at ¶ (b)(1).
[152] Equal Emp. Opportunity Comm'n v. Catastrophe Mgmt. Sols., 852 F.3d 1018 (11th Cir. 2016).
[153] *Id.*
[154] H.R. Res. 5309, 116th Cong. (2020) (stating that "[l]ike one's skin color, one's hair has served as a basis of race and national origin discrimination.").
[155] *Id.* at ¶ 4.
[156] *Id.* at ¶ 9.
[157] S.B. S6209A, Legis. 2019-2020 Sess. (N.Y. 2019).

hairstyles."[158] Policies like these further eliminate a court's need to draw the connection between hair and race itself because the connection is now incorporated into the understanding of race in the actual language of the statute itself.

The text of the CROWN Act further mentions that existing federal law, including Title VII, has been misinterpreted by federal courts in the context of hair discrimination to such a degree that this law has become a necessary measure to protect those who wear their hair in the abovementioned styles.[159] Alternatively, Title VII could be amended. However, this reference acknowledges the failures of Title VII, and the courts' application of Title VII, which shows that the Act is intended to address the shortcomings of Title VII.

Where applying Title VII would require additional persuasion for the court, the CROWN Act expressly states the connection between hair and race without the need to persuade a court that this nexus exists.[160] Without courts needing to examine the additional cultural elements, there would no longer be any sort of misinterpretation of whether employees could be discriminated against for their hairstyle. This would greatly improve the areas where Title VII has been misapplied given that courts have been so hesitant to see hairstyle as part of race in the past.

Like the New York City Commission on Human Rights guidance, the CROWN Act also requires that "school, workplace, and other applicable standards be applied in a nondiscriminatory manner and to explicitly prohibit the adoption or implementation of grooming requirements that disproportionately impact people of African descent."[161] Not only is it significant that the Act explains the cultural importance of hair, but it also specifically notes that grooming policies of the past,[162] such as the policies of the United States Armed Forces, have been discriminatory and disproportionate in their application.[163] For example, the Act states "the Federal Government should acknowledge that individuals who have hair texture or wear a hairstyle that is historically and contemporarily associated with African Americans or persons of African descent systematically suffer harmful

[158] N.J. STAT. § 10:5-5ww (West 2020).
[159] H.R. Res. 5309 at ¶ 9.
[160] *Id.*
[161] *Id.* at ¶ (a)(8).
[162] *See* Eatman v. United Parcel Serv., 194 F. Supp. 2d 256 (S.D.N.Y. 2002).
[163] H.R. Res. 5309 at ¶ (a)(8).

discrimination in schools, workplaces, and other contexts based upon longstanding race and national origin stereotypes and biases."[164]

This acknowledgement shows that there is an understanding of how grooming policies have been applied disproportionately to persons of African or African American descent. The Armed Forces policies only applied to black women as they were the only group within the Armed Forces with highly extensive grooming rules.[165] The Armed Forces has since recognized that appearance and grooming do not impinge on a black man or woman's job qualifications because there is no relationship between appearance and occupational skill.[166]

### A. Opposition to the CROWN Act

Despite significant progress and support for the CROWN Act, states have faced opposition in attempting to pass hair discrimination laws to increase protections for minority employees in the workplace.[167] West Virginia and Nebraska have expressly rejected the proposed hair discrimination bills citing overbroad legislation and lack of necessity.[168]

There are four major arguments against the CROWN Act. One such argument states that the CROWN Act is unnecessary because if race and hair are so closely connected, then Title VII is sufficient to protect against hair discrimination.[169] To the contrary, opposition to this type of legislation cites that there is a distinct difference between hairstyle and race, and for that reason, no additional legislation is necessary to specifically protect people of color beyond what already exists.

In February of 2020, the West Virginia legislature rejected a state version of the Act.[170] Part of its failure was due to the legislators'

---

[164] H.R. Res. 5309 at ¶ (b)(1).
[165] Rodan, *supra* note 58.
[166] H.R. Res. 5309 at ¶ (a)(8).
[167] *See* H.R. 4508, 84th Legis., Reg. Sess. (W. Va. 2020); *see* L.B. 106th Legis., 2nd Reg. Sess. (Neb. 2019).
[168] *See id.*; *see infra* notes 169-70, 180-84 and accompanying text.
[169] *See* Ashleigh McKenzie, *Discrimination Based on Hair and Hairstyles: Protected or Knot?*, JD SUPRA, (Aug. 20, 2019), https://www.jdsupra.com/legalnews/discrimination-based-on-hair-and-27461.
[170] Jennifer Roberts, *UPDATE: CROWN Act 'dethroned' in West Virginia, bill banning hair discrimination in the schools and workplace*, WVVA (Feb. 27, 2020, 6:54 PM), https://wvva.com/2020/02/27/beckley-student-motivation-for-crown-act-bill-banning-hair-discrimination-in-schools-and-workplace.

lack of understanding the importance of this law, and their collective failure to see hair or hair discrimination as a prevalent enough issue, to warrant enacting legislation to address it.[171]

Another opposing view is that there are safety concerns that arise by allowing employees to wear their hair in any style, including longer styles like braids.[172] However, there are no parts of the CROWN Act that would imply that it would trump any existing safety laws, such as the Occupational Safety and Health Administration laws.[173] While safety is a valid concern, the actual application of the law does not interfere with safety measures.[174] Safety laws are applied generally rather than exclusively targeting a specific group, thus discrimination in enforcing these laws is less likely.[175] Further, safety concerns can be addressed through the burden shifting process and does not need to be addressed statutorily.

There has also been opposition to the scope of the CROWN Act. For example, Louisiana introduced a bill to prohibit hair discrimination.[176] The bill faced significant opposition because it included protections in schools and educational opportunities.[177] Louisiana CROWN Act supporters intend to revise the law by adding that schools would follow hair discrimination prohibitions passed by local city councils.[178] They intend for this local push to create momentum for support of a statewide version of the CROWN Act to be passed in Louisiana in the future.[179] The local approach is incremental, as opposed to larger statewide pushes; however, it may be more effective to garner local support for this legislation before bringing it to a larger scale. Narrowing the scope of the CROWN Act provides two benefits. First, it allows specific concerns, such as in the education system in Louisiana, to be addressed without affecting other

---

[171] *Id.* Even after being revived in committee, it ultimately failed in the Senate. *Id.*
[172] *See* McKenzie, *supra* note 169.
[173] *See* H.R. Res. 5309.
[174] *See id.*
[175] *See id.*
[176] Brad Bennett**,** *CROWN Act movement seeks to protect Black people from racial discrimination based on hairstyles*, S. POVERTY L. CTR. (Apr. 15, 2020), https://www.splcenter.org/news/2020/04/15/crown-act-movement-seeks-protect-black-people-racial-discrimination-based-hairstyles.
[177] *Id.*
[178] *Id.*
[179] *Id.*

areas. Second, because there would not be sweeping change, it may garner more support for the Act.

In August 2020, Governor Pete Ricketts of Nebraska vetoed an amendment to the Nebraska Fair Employment Practices Act that would enact protections against hair discrimination in the workplace.[180] He cited that "some hairstyles, such as locks, braids, and twists, are not exclusively worn by one race."[181] He also claimed that the bill ignored blatant safety concerns and hindered employers from enacting grooming policies that directly relate to safety, such as food preparation and machine operation.[182] While he did agree that this matter was of great importance, he was unwilling to let the bill go forward in its proposed state.[183] It is important to note, however, that none of these concerns were brought to lawmakers prior to Governor Ricketts' veto.[184]

Considering that Governor Ricketts claims to agree that legislation to address hair discrimination is necessary, there is hope for the passage of future hair discrimination legislation after his serious concerns are addressed.[185] Where valid concerns are present, any legitimate nondiscriminatory grooming policies or standards can be addressed outside of any proposed statutes through the existing burden shifting process. Given that this burden shifting process already exists, statutes do not need to address these concerns, especially health and safety concerns, since employers have an available avenue to show that their policies are legitimate and nondiscriminatory if litigation surrounding the policy arises.

---

[180] Darian Symoné Harvin, *The CROWN Act Should Be Passed in All 50 States, So Why Hasn't It?* HARPER'S BAZAAR (Oct. 9, 2020), https://www.harpersbazaar.com/beauty/hair/a34316254/crown-act-federal-and-state-hair-discrimination-law.

[181] Paul Hammel, *Gov. Ricketts vetoes natural hair discrimination bill, signs abortion bill*, OMAHA WORLD HERALD (Aug. 15, 2020), https://omaha.com/news/state-and-regional/govt-and-politics/gov-ricketts-vetoes-natural-hair-discrimination-bill-signs-abortion-bill/article_b58fe971-93a6-5b62-b120-652e61c5adf4.html.

[182] *Id.*

[183] *Id.*

[184] Harvin, *supra* note 180. ("While I agree with the goal, I object to the form of the bill. It needs to add protections for employees based upon their immutable hair texture and to also add protections for employers centered on health and safety standards.").

[185] Hammel, *supra* note 181.

### B. Employer Recommendations

Employers do not need to abandon their grooming and appearance policies altogether. Instead, with the introduction of the CROWN Act,[186] employers should ensure that their policies do not explicitly prohibit natural hair or protective hairstyles outright. Employers should also consider the language they use to describe their grooming and appearance standards and remove any language that targets any group more than another group. Just as the United States Armed Forces removed the words "unkempt" and "matted" from its appearance policy when referring to minority hairstyles,[187] employers should change and replace any offensive and subjective language with neutral language that can be applied equally to all employees, regardless of race. Employers could combat any confusion with a provision in their policy that expressly allows employees to wear natural and protective hairstyles in the workplace.

Similarly, employers should consider the rationale behind their policies.[188] Without any sort of practical reasoning for hairstyle or grooming guidelines, an employer will likely not have a strong argument in any legal action if a suit arises from hair discrimination in the employer's workplace. If the reason for grooming or appearance policies is based on health and safety concerns, this is likely a valid policy and could be applied effectively for all employees. A policy stating that long hair must be tied back during food preparation would likely apply to both male and female employees of any race and serves a legitimate business purpose.

If a policy does not serve a purpose other than employees maintaining a "professional appearance," employers should consider that their perspective may lead to traditionally Eurocentric features being associated with professionalism. This may go to an employer's implicit bias, which can be addressed in part by including educational

---

[186] State versions of the CROWN Act have been passed in New York (by executive order), New Jersey, Colorado, Maryland, Virginia, and Washington.

[187] Rodan, *supra* note 58.

[188] McKenzie, *supra* note 169. "Employers also should ensure that they uniformly apply any rules that require employees to secure their hair for bona fide security, safety, and hygienic reasons." *Id.*

opportunities to teach their employees about implicit bias and how it can impact their decision-making ability. In this situation, employers should ensure that their grooming policy enforcers obtain training to identify traits and features that are historically and culturally associated with any given race to avoid penalizing any employee for representing themselves in that manner.

Using the *Vazquez*[189] case as an example, employers should contemplate whether their policies would disproportionately impact one group more than others. They should further consider stepping away from using a "case-by-case" basis standard to avoid any potential discrimination on the part of the supervisor, or whoever is in charge of ensuring grooming standards are followed. The enforcer's possible bias has great potential to skew the application of the policy.

As many employers transition to more inclusive workplaces, it is important to apply the same standards to prospective employees. When considering the court's holding in the *CMS* case,[190] it is clear that courts intend to include prospective employees when applying protections. Regarding prospective employees, employers should engage in fair hiring practices, which include maintaining a neutral stance on a candidate's appearance when that candidate wears his or her hair in a natural or protective hairstyle.[191]

## V. CONCLUSION

Upon analyzing courts' hesitancy to expand Title VII's "race" category to include hair, it has become clear that additional legislation is needed to protect individuals in those groups against hair discrimination. Given the important historical and cultural significance of hair, the CROWN Act is a chance to make up for the shortcomings of Title VII in terms of hair discrimination. Additionally, the CROWN Act can serve as the best legal avenue to protect employees who wear their natural hair or protective hairstyles.

---

[189] *See* Vazquez v. Caesar's Paradise Stream Resort, No. 3:CV-09-0625, 2013 WL 6244568, at *10-11 (M.D. Pa. Dec. 3, 2013).

[190] *See* Equal Emp. Opportunity Comm'n v. Catastrophe Mgmt. Sols., 852 F.3d 1018 (11th Cir. 2016).

[191] *See* Annie Herndon Reese, *The Roots of The CROWN Act: What Employers Need to Know about Hairstyle Discrimination Laws*, FISHER PHILLIPS (Apr. 23, 2020), https://www.fisherphillips.com/resources-newsletters-article-the-roots-of-the-crown-act-what.

The general shift toward inclusion in the workplace should act as a guide to employers retiring their outdated grooming and appearance policies. Employers can keep grooming and appearance policies as long as those policies are equally enforced across all employees, and there is a legitimate purpose behind the policy. Employees should be subject to reasonable grooming or appearance policies that directly impact their work, instead of policies that do not impede their ability to perform their jobs.

Where Title VII leaves ambiguity for the courts' application, the CROWN Act has the opportunity to reign supreme for hair discrimination.